

SixTen and Associates

Mandate Reimbursement Services

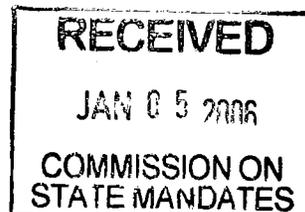
KEITH B. PETERSEN, MPA, JD, President
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San Diego, CA 92117

Telephone: (858) 514-8605
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E-Mail: Kbpsixten@aol.com

December 30, 2005

FAX TO 916-445-0278

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814



RE: Incorrect Reduction Claim of Gavilan Joint CCD
Collective Bargaining
Fiscal Year 1995-96

Dear Ms. Higashi:

I have received today the letter dated December 27, 2005, signed by Cathy Cruz on your behalf, in which, in your capacity as Executive Director, you reject the incorrect reduction claim referenced above, to which I respond on behalf of the Gavilan Joint Community College District.

The commission staff has concluded that the claim was not timely filed, pursuant to Title 2, CCR, Section 1185 (b). The claimant is appealing your decision pursuant to Section 1181. This appeal is timely filed within ten days of receipt of notification. This appeal is being faxed to the Commission on the date indicated and will be served by mail when I receive a copy of the mailing list referenced in Victoria Soriano's December 27, 2005 declaration of service by mail.

The decision to reject the claim is contrary to your executive authority. The incorrect reduction claim presents several issues of first impression which require findings of fact and law before there can be a conclusion that the claim was not timely filed.

Government Code Section 17553, subdivision (d), requires the Commission to determine within ten days of receipt whether an incorrect reduction claim is "complete." Your action was not a determination of "completeness," rather it was a conclusion of law concerning subject matter jurisdiction for which there is no basis in Section 17553. The Government Code does not allow the Executive Director to adjudicate questions of law and fact. Nor does the Government Code provide a statute of limitation for the filing an incorrect reduction claim.

The commission action relies upon Title 2, CCR, Section 1185 (b) to assert as a matter

of law that the incorrect reduction claim was filed more than three years following a Controller's notice of reduction. To the contrary, the incorrect reduction claim asserts as a matter of fact that the Controller's July 10, 2002 letter reports an amount payable to the claimant, which means a subsequent final payment action notice occurred or is pending from which the ultimate regulatory period of limitation is to be measured, which the claimant has so alleged.

The evidence regarding the date of last payment action, notice, or remittance advice, is in the possession of the Controller. While it would be convenient for the claimant to have all of this documentation available, it is not a prerequisite for the claim. The Commission can obtain this information from the Controller without prejudice to the tolling of the regulatory period of limitation, while the claimant would be subject to the convenience of the Controller's response while the regulatory period was running.

Therefore, there are several issues to be determined by the hearing process, which the Executive Director cannot unilaterally determine:

1. What Controller documents constitute "notice" from which a regulatory period of limitation can be measured?
2. What is the claimant's burden in going forward with an incorrect reduction claim regarding documentation originated and maintained by the Controller?
3. What is the authority of the Executive Director to unilaterally deny a claimant's statutory right to the incorrect reduction claim due process?

This letter also transmits the original and one copy of the incorrect reduction claim you returned with the letter of December 27, 2005.

CERTIFICATION

I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this document is true and correct to the best of my own knowledge or information or belief.

Sincerely,



Keith B. Petersen

Copies without enclosures: Per COSM Distribution List

1 **DECLARATION OF SERVICE**

2
3 RE: Incorrect Reduction Claim of Gavilan Joint CCD
4 Collective Bargaining
5 Fiscal Year 1995-96
6

7 I declare:

8
9 I am employed in the office of SixTen and Associates, which is the
10 appointed representative of the above named claimant. I am 18 years of
11 age or older and not a party to the entitled matter. My business address is
12 5252 Balboa Avenue, Suite 807, San Diego, CA 92117.
13

14 On the date indicated below, I served the attached response to the
15 December 27, 2005 letter signed by Cathy Cruz, Program Analyst,
16 Commission on State Mandates draft staff analysis to:
17

18 Paula Higashi, Executive Director
19 Commission on State Mandates
20 980 Ninth Street, Suite 300
21 Sacramento, CA 95814
22 916-445-0278
23

24 **U.S. MAIL:** I am familiar with the
25 business practice at SixTen and
26 Associates for the collection and
27 processing of correspondence for mailing
28 with the United States Postal Service. In
29 accordance with that practice,
30 correspondence placed in the internal
31 mail collection system at SixTen and
32 Associates is deposited with the United
33 States Postal Service that same day in
34 the ordinary course of business.
35

FACSIMILE TRANSMISSION: On the
date below from facsimile machine
number (858) 514-8645, I personally
transmitted to the above-named
person(s) to the facsimile number(s)
shown above, pursuant to California
Rules of Court 2003-2008. A true copy of
the above-described document(s)
was(were) transmitted by facsimile
transmission and the transmission was
reported as complete and without error.

36 **OTHER SERVICE:** I caused such
37 envelope(s) to be delivered to the office
38 of the addressee(s) listed above by:
39

A copy of the transmission report issued
by the transmitting machine is attached to
this proof of service.

40 _____
41 (Describe)
42

PERSONAL SERVICE: By causing a true
copy of the above-described document(s)
to be hand delivered to the office(s) of the
addressee(s).

43 I declare under penalty of perjury under the laws of the State of California that the
44 foregoing is true and correct and that this declaration was executed on December 30,
45 2005, at San Diego, California.
46

47  4:01 PM
48

Will C. Trimm

Subj: Gavilan Incorrect
Date: 12/30/2005 2:05:54 PM Pacific Standard Time
From: Kbpsixten
To: paula.higashi@csm.ca.gov, nancy.patton@csm.ca.gov

I received your 12/27 rejection of the Gavilan incorrect. I am going to appeal. However, I need the mailing list which was referenced in the declaration of service. Please fax or email it to me.

Thanks

Keith

SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, 92117
Voice: 858-514-8605
Fax: 858-514-8645

Subj: RE: Gavilan Incorrect
Date: 1/3/2006 11:11:44 AM Pacific Standard Time
From: paula.higashi@csm.ca.gov
To: Kbpsixten@aol.com

Happy New Year Keith! Thanks for your Christmas card.

Re Gavilan – No one is on the mailing list.

I'd like to talk with you about "mandate reform" within next two weeks if possible. Let me know where and when it is ok to call you.

Paula Higashi, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814
(916) 323-8210

From: Kbpsixten@aol.com [mailto:Kbpsixten@aol.com]
Sent: Friday, December 30, 2005 2:06 PM
To: Paula Higashi; Nancy Patton
Subject: Gavilan Incorrect

I received your 12/27 rejection of the Gavilan incorrect. I am going to appeal. However, I need the mailing list which was referenced in the declaration of service. Please fax or email it to me.

Thanks

Keith

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